



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 24, 1998

Ms. Esther Hajdar
University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR98-2298

Dear Ms. Hajdar:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 118524.

The University of Texas at San Antonio (the "university") received a request for information relating to an employee of the university and a charge of discrimination filed by that employee against the university with the Equal Employment Opportunity Commission ("EEOC"). You indicate that you have released some of the requested information but seek to withhold the remainder under section 552.103 of the Government Code. You have submitted the responsive documents for which you claim this exception. We have considered your arguments and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The university has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The university must meet both prongs of this test for information to be excepted under section 552.103(a).

The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation

involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You assert that the requestor has filed a complaint against the university with the Equal Employment Opportunity Commission ("EEOC"). This assertion is substantiated by the requestor. Her letter specifically states that the information sought is pursuant to her EEOC complaint. Further, you have supplied a copy of a "Notice of Charge of Discrimination," which conclusively establishes that a complaint is pending. This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). You have therefore shown that litigation is reasonably anticipated. We have examined the submitted documents and conclude that they relate to the pending EEOC claim. You may therefore withhold the submitted information pursuant to section 552.103(a).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 118524

Enclosures: Submitted documents

cc: Ms. Joleen Reynolds
2911 Ridge Song
San Antonio, Texas 78247
(w/o enclosures)